

This instrument prepared by and  
after recording return to:  
Arkansas Development Finance Authority  
Post Office Box 8023  
Little Rock, Arkansas 72203  
Attn: General Counsel

LAND USE RESTRICTION AGREEMENT  
AND DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR THE SECTION 1602 EXCHANGE PROGRAM

This Land Use Restriction Agreement and Declaration of Land Use Restrictive Covenants (the "Agreement"), dated \_\_\_\_\_, 2009, is hereby entered into by \_\_\_\_\_, a \_\_\_\_\_ limited partnership, whose address is \_\_\_\_\_ (hereinafter called "Owner"), and the Arkansas Development Finance Authority, a public body politic and corporate under the laws of the State of Arkansas, or any successor to its rights, duties, and obligations, whose offices are located at 423 Main Street, Suite 500, Little Rock, Arkansas 72201 (hereinafter "ADFA") as a condition precedent to the allocation of Section 1602 Exchange Program funds by ADFA.

**WITNESSETH**

WHEREAS, the Owner is the owner of a fee interest in certain real property located in \_\_\_\_\_, State of Arkansas, which real property is more particularly described on the attached **Exhibit A** (the "Property" or the "Mortgage Premises"); and

WHEREAS, the Owner will construct, own, operate, maintain and manage on the Property \_\_\_\_\_ (\_\_\_\_\_) multifamily housing units, \_\_\_\_\_ (\_\_\_\_\_) of which shall be operated as \_\_\_\_\_ housing, together with such other improvements as may be necessary such as infrastructure, landscaping, curbing to be known as \_\_\_\_\_ (the "Improvements"); and

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LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
BETWEEN \_\_\_\_\_, and

(Development Owner)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY - Section 1602 Program

WHEREAS, the Property and Improvements shall be referred to as the “Development” and are subject to Section 42 of the Internal Revenue Code, 26 USC Section 42 (“Section 42”); and

Whereas, ADFA elected to participate in the Section 1602 Exchange Program of the United States Treasury (“Section 1602 Exchange Program”), and

WHEREAS, ADFA received TCAP funding from the United State Department of Housing and Urban Development (“HUD”) pursuant to The American Recovery and Reinvestment Act of 2009 (hereinafter referred to as the “Act”); and

WHEREAS, the Owner has represented to ADFA in the 2009 Special Multi-Family Housing Application for Additional Tax Credits, HOME Funds, TCAP and Section 1602 Exchange Program Funds (the “Application”) that, it will construct the Development in accordance with the Application and shall lease, rent or make available \_\_\_\_\_ (\_\_\_\_\_) of the Development residential units to individuals or families which income are equal to or less than sixty percent (60%) of the area median household income (including adjustments for family size) (thereinafter “Qualified Tenant”), for a gross rental rate no greater than thirty percent (30%) of the maximum eligible household income for a household of 1.5 persons per bedroom for all of the units (the “Affordable Housing Units”), as defined in the Act and Section 42; and

WHEREAS, the Owner has executed the following documentation to ADFA, in addition to the Application: 1) Section 1602 Exchange Program Agreement; 2) Mortgage with Assignment of Rents and Leases and Security Agreement; 3) Promissory Note; and 4) Guaranty (the “Section 1602 Exchange Program Documents”).

WHEREAS, the Section 1602 Exchange Program, the Act and Section 42 require, as a condition precedent to the allocation of the Section 1602 Exchange Program funds, that the Owner execute, deliver and record in the official land deed records of the County in which the Property covered under this Agreement is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of the Section 1602 Exchange Program, the Act and Section 42, by regulating and restricting the use and occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Property for the term stated herein and shall be binding, except as otherwise expressly provided herein, upon all subsequent Owners of the Development for such terms, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner agrees as follows:

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LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
BETWEEN \_\_\_\_\_, and

(*Development Owner*)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY - Section 1602 Program

## **SECTION 1. DEFINITIONS**

All words and phrases defined in the Section 1602 Exchange Program, the Act and Section 42 and Regulations shall have the same meaning in this Agreement.

## **SECTION 2. RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

(A) Promptly, upon execution and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the official public land deeds records of the County in which the Property is located, and shall pay all fees and charges incurred in connection with such recording. Owner shall provide to ADFA the original copy of the recorded document.

(B) The Owner intends, declares and covenants, on behalf of itself and all future Owner and operators of the Development during the term of this Agreement that this Agreement and the covenants and restrictions set forth regulating and restricting the use, occupancy and transfer of the Development (i) shall be and are covenants running with the land and improvements, encumbering the Development for the term of this Agreement, and binding upon the Owner's successors in title and all subsequent owner and operators of the Development, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner (and the benefits shall inure to ADFA and any past, present or prospective Qualified Tenant, as hereinabove or hereinafter defined, of the Development) and its and their respective successors and assigns during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of Arkansas to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to ensure that those restrictions run with the land. For the longer of the period that the Section 1602 Exchange Program loan to Owner remains outstanding or for the terms of this Agreement, each and every contract, deed or other instrument hereafter executed conveying the Development or any portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Development or any portion thereof proves that such conveyance is subject to this Agreement.

(C) The Owner further covenants to require compliance with this Agreement in each and any Property Management Agreement for the management of the Development during the term of this Agreement.

## **SECTION 3. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER.**

The Owner hereby represents, warrants and covenants that:

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LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
BETWEEN \_\_\_\_\_, and

(Development Owner)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY - Section 1602 Program

(a) The Owner (i) is a limited partnership duly organized under the laws of the State of Arkansas, and is qualified to transact business under the laws of the State of Arkansas; (ii) has the power and the authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated by this Agreement and as set forth in the Section 1602 Exchange Documents in effect as of the date of recording of this Agreement, and (iii) has the full legal right and authority to execute and deliver this Agreement and to perform all the undertakings of the Owner hereunder.

(b) The execution and performance of this Agreement and the Section 1602 Exchange Program Documents by the Owner (i) will not violate or, as applicable, have violated any provision of law, rule or regulation, or any order of any court or any agency or governmental body, and (ii) will not violate, or as applicable, will have not violated any provision of any indenture, agreement, mortgage, promissory note or other instrument to which the Owner is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(c) The Owner will, at the time of execution and delivery of this Agreement, have good and marketable title to a fee interest in the Development free and clear of any lien or encumbrance except the encumbrances created pursuant to this Agreement, the Section 1602 Exchange Program Documents or other permitted encumbrances allowable by ADFA.

(d) There is no action suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement or the other documents relating to the Agreement) or materially adversely affect its financial condition.

(e) The Development consists of, or will consist of at least \_\_\_\_\_ (\_\_\_\_\_) “Affordable Housing Units” as defined in the Section 1602 Exchange Program, the Act and Section 42 and will make such “Affordable Housing Units” available to individuals or families whose incomes are equal to or less than sixty percent (60%) of the area median household income (including adjustments for family size).

(f) Each unit in the Development contains complete facilities for living, sleeping, eating, cooking and sanitation which are to be used on other than a transient basis.

(g) During the term of this Agreement, all units shall be leased and rented or made available to members of the general public who are Qualified Tenants under the Section 1602 Exchange Program, the Act and Section 42.

(h) The Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.

- (i) During the term of this Agreement, the Owner covenants, agrees and warrants that each Affordable Housing Unit is, and will remain suitable for occupancy.
- (j) Subject to the requirements of the Section 1602 Exchange Program, the Act and Section 42 and this Agreement, the Owner may sell, transfer or exchange the entire Development at any time, but the Owner warrants that it will notify ADFA in writing prior to any such sale, transfer or exchange, and obtain the agreement of any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirement of this Agreement and to the requirements of the Section 1602 Exchange Program, the Act and Section 42. This provision shall not act to waive any other restrictions on sale, transfer or exchange of the Development. ADFA must provide Owner with written approval of the sale, transfer or exchange. The Owner agrees that any sale, transfer or exchange of the Development without prior written approval by ADFA will be void. Owner shall not sell, transfer, exchange or in any other way dispose of less than its entire interest in the Development.
- (k) The Owner agrees to notify ADFA in writing of any sale, transfer or exchange of the entire Development.
- (l) The Owner shall not demolish any part of the Development or substantially subtract from any real or personal property of the Development or permit the use of any residential rental unit for any purpose other than renting housing during the term of this Agreement unless required by law.
- (m) The Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement and of the Section 1602 Exchange Program Documents.
- (n) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof except the Section 1602 Exchange Program Documents and that in any event, the requirements of this Agreement are paramount and controlling as the rights and obligations herein set forth and supersede any other requirements in conflict herewith, except the Section 1602 Exchange Program Documents.
- (o) During the term of this Agreement, the Owner shall not evict or terminate the tenancy of an existing Qualified Tenant of any Affordable Housing Unit other than for good cause and shall not increase the gross rent of any such unit above the maximum allowed under the Section 1602 Exchange Program, the Act and Section 42.

(p) During the term of this Agreement, the Owner shall not refuse to rent a unit because a Qualified Tenant has a Section 8 certificate or voucher that Tenants seeks to use to lease a unit in the Property.

#### **SECTION 4. INCOME RESTRICTIONS RENTAL RESTRICTIONS**

The Owner represents, warrants and covenants throughout the term of this Agreement and in order to satisfy the requirements of the Section 1602 Exchange Program, the Act and Section 42 and Regulations that:

(a) At least \_\_\_\_\_ (\_\_\_\_\_) of the residential units in the Development are Affordable Housing Units and will be occupied by individual or families whose income is equal to or less and sixty percent (60%) of the area median household income (the "Low Income Tenants"), including adjustments for family size; and

(b) The Owner shall charge a gross rental rate on the Affordable Housing Units not to exceed thirty percent (30%) of the maximum eligible household income for a household of 1.5 persons per bedroom of the Low Income Tenants as defined in the Act and Section 42.

#### **SECTION 5. TERM OF AGREEMENT**

(a) This agreement shall be effective for the purposes set forth herein on the date it is recorded and filed in the official public land deed records of the County in which the Property is located.

(b) Except as hereinafter provided, for each building a part of the Development which contains Affordable Housing Units, the low income use and rental restrictions specified herein shall commence with the first day any such building is placed in service and shall remain effective for a period of thirty-five (35) years.

(c) Notwithstanding subsection 5(b) above, this Agreement with respect to any building which is part of this Development shall terminate on the date the building is acquired by foreclosure or instrument in lieu of foreclosure, unless ADFA determines that such acquisition is part of an arrangement with the Owner, the purpose of which is to terminate such compliance or extended compliance period. In the event ADFA makes this determination, it will enforce the remedies provided herein.

(d) Notwithstanding termination of this Agreement pursuant to subsection 5(c) above, no existing tenant in an affected Affordable Housing Unit will be evicted or have her/his occupancy terminated, other than for good cause, for a 3-year period following termination of this Agreement; nor will the gross rent of any such affected low-income unit be increased above the amount permitted by the Act and Section 42 for a 3-year period following termination of this Agreement.



## SECTION 6. ENFORCEMENT OF OCCUPANCY RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of ADFA to inspect any books and records of the Owner regarding the Development which pertain to compliance with the Section 1602 Exchange Program, the Act and Section 42 and regulations.
- (b) The Owner shall submit a copy of the Certification of Continuing Compliance to ADFA at least annually, or as requested by ADFA, in order to monitor compliance with the provisions specified in this Agreement.
- (c) The determination whether a tenant meets the Affordability Housing rental requirements shall be made by the Owner at least annually on the basis of the current income of each Low Income Tenant and the Owner shall submit such information for such Low Income Tenant to ADFA in a format acceptable to ADFA.
- (d) The determination of whether such a unit continues to meet the Affordable Housing rental requirements shall be made by the Owner at least annually on the basis of current rental information of such Affordable Housing Unit and the Owner shall submit such information for each such Affordable Housing Unit to ADFA in a format acceptable to ADFA.
- (e) The Owner shall submit any other information, documents or certification requested by ADFA and which ADFA shall deem reasonably necessary to substantiate the Owner's continuing compliance with the Section 1602 Exchange Program, the Act and Section 42.
- (f) The Owner covenants that it will not take or permit any action that would result in a violation of the requirements of the Section 1602 Exchange Program, the Act and Section 42 or this Agreement. Moreover, the Owner covenants, subject to the provision of the Section 1602 Exchange Program Documents, to take any lawful action (including amendment of this Agreement) as may reasonably necessary, in the opinion of ADFA, to comply fully with the Section 1602 Exchange Program, the Act and Section 42 or other official rules, regulations, ruling, policies, procedures or statement promulgated or proposed by the Arkansas Department of Finance and Administration, or ADFA, from time to time, pertaining to the Owner's obligations under the Section 1602 Exchange Program, the Act and Section 42 and affecting the Development, but no such action shall alter the Owner's obligation under the Section 1602 Exchange Program Documents.
- (g) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by ADFA and all persons interested in the Development's compliance under the Act, Section 42, regulations, and agency guidance.
- (h) Owner will take, subject to the provisions of the Section 1602 Exchange Program Documents, any and all actions reasonably necessary and required by ADFA to substantiate the

Owner's compliance with the occupancy restrictions of the Section 1602 Exchange Program, the Act and Section 42 and/or any asset management company engaged by ADFA.

## SECTION 7. MISCELLANEOUS

(a) This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its successors, grantees and assigns, all subsequent owners of the Development or any interest therein and ADFA and its successors and assigns for the period specified in Section 5(b) herein unless terminated sooner pursuant to Section 5(c) subject to the provisions to Section 5(d) herein.

(b) Any terms not defined in this Agreement shall have the same meaning as terms defined in the Section 1602 Exchange Program, the Act, Section 42, regulations, and agency guidance.

(c) The Owner and ADFA agree that they will take all actions necessary to effect any amendment of this Agreement as may be necessary to comply with the Act and Section 42, applicable rules, regulations, policies, procedures, rulings, or other official statements which pertain to the Section 1602 Exchange Program funds.

(d) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(e) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed to the parties hereto at the addresses set forth below or to such other place as a party may from time to time designate in writing:

To ADFA: Arkansas Development Finance Authority  
Post Office 8023  
Little Rock, Arkansas 72203  
ATTN: Multifamily Housing Programs Manager

To the Owner: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ADFA and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

(f) This Agreement shall be governed by the laws of the State of Arkansas and, where applicable, the laws of the United States of America.

(g) If at any time during the term of this Agreement, ADFA determines that the Development is not in compliance with the Section 1602 Exchange Program, the Act and Section 42, ADFA



may, within ninety (90) days give notice to the Owner, seek such relief as allowed under the laws of the State of Arkansas and this Agreement.

(h) The obligations of the Owner as set forth herein and in the application shall survive the allocation of Section 1602 Exchange Program funds and shall not be deemed to terminate or merge with the closing of the Section 1602 Exchange Program Documents.

(i) This Agreement and restrictions hereunder are subordinate to the Section 1602 Exchange Program Documents, and to the rights of the parties thereto conferred therein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

OWNER:

\_\_\_\_\_

By:\_\_\_\_\_

Its: General Partner

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

ADFA:

ARKANSAS DEVELOPMENT FINANCE  
AUTHORITY

By:\_\_\_\_\_

Mac Dodson, President

ACKNOWLEDGMENTS ON THE FOLLOWING PAGE.

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LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS

BETWEEN \_\_\_\_\_, and

(Development Owner)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY - Section 1602 Program

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared before me, a notary public and in and for said State and County, duly commissioned and qualified, \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ limited partnership, with whom I am personally acquainted, or who proved to me to be on the basis of satisfactory evidence, and who acknowledged that he/she executed the above instrument for the purposes therein contained, and who further acknowledged that he/she is authorized to executed this instrument on behalf of the limited partnership stated above.

Witness my hand and notary seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared before me, a notary public and in and for said State and County, duly commissioned and qualified, Mac Dodson, the President of Arkansas Development Finance Authority (the "Authority") with whom I am personally acquainted, or who proved to me to be on the basis of satisfactory evidence, and who acknowledged that he executed the above instrument for the purposes therein contained, and who further acknowledged that he authorized to executed this instrument on behalf of the Authority.

Witness my hand and notary seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
LAND USE RESTRICTION AGREEMENT and DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
BETWEEN \_\_\_\_\_, and

(Development Owner)

ARKANSAS DEVELOPMENT FINANCE AUTHORITY - Section 1602 Program

